



An Informational Guide for

DOMESTIC VIOLENCE VICTIMS IN VIRGINIA

UNDERSTANDING THE LEGAL PROCESS

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Department of Criminal Justice Services

JULY 2010



www.dcjs.virginia.gov

INTRODUCTION

This brochure has been prepared to assist domestic violence victims and to provide information about going to court. It includes information about obtaining protective orders and criminal warrants. Information is also provided on safety planning and resources available. The final section defines commonly used terms.

If you have been a victim of a crime, you may experience conflicting feelings and thoughts. The criminal justice system may also seem to be confusing and difficult to understand. This brochure should provide you with basic information and definitions to assist you in understanding the process. Definitions of words in **bold** can be found at the back of the brochure.

DOMESTIC VIOLENCE DEFINED

Domestic violence is a pattern of physically, sexually, and/or emotionally abusive behaviors used by one individual to assert power or maintain control over another in the context of an intimate or family relationship.

PLAN FOR YOUR SAFETY

It is important to plan for your safety and the safety of your children. Do as many of the following as possible. Remember, your safety comes first:

- Plan for a quick escape. Know where to go and how to get there, any time of the day or night. Think this through now, before an attack. Consider going to a **domestic violence shelter** or the home of a family member or friend. If that is not possible, try a public place such as a library, hospital, shopping center, police or fire station. Know where each is located.
- If you believe you are about to be assaulted, stay out of rooms where there are weapons such as guns or knives. Do not attempt to threaten the abuser with a weapon, as it may put you in an even more dangerous situation.
- Keep a list of telephone numbers of family, friends, doctors, safe shelter, etc.
- Gather important documents such as:
 - birth certificates
 - passports
 - prescriptions
 - social security numbers
 - copies of any protective orders

- records of the abuser's prior convictions (if any)
- marriage license
- insurance information
- children's school records
- immunization (shots) records
- medical records
- information about bank accounts
- any other information you feel is necessary should you need to leave quickly.

- Put aside emergency money.
- Hide an extra set of car keys.
- Keep an extra set of clothes and shoes for you and your children with a trusted friend or neighbor.
- Take a special toy for your child(ren).
- Let the people that you trust know about your situation and the violence you are experiencing.
- Trust yourself and your decisions. You are the one who can best determine how to stay safe.

WARNING: Abusers try to control their victims' lives. When abusers feel a loss of control—like when victims try to leave them—the abuse often gets worse. Take special care if you leave. Continue to be careful, even after you have left.

ASSISTANCE AVAILABLE TO YOU

In addition to the police department or sheriff's office and the **prosecutor's** office, there are others who may be able to assist you with information, referrals or support. A local **domestic violence program** can provide you with support, information, and/or safe shelter for you and your children.

The **domestic violence program** may also provide an advocate to go with you to court.

A **victim/witness program** in your community can answer your questions about court procedures. The **victim/witness program** can assist you in making arrangements to attend court and/or meet with a prosecutor.

If you cannot afford a lawyer, a **legal aid society** may be able to offer you legal assistance or information on protective orders, custody, divorce or visitation.

An intake officer associated with the **Juvenile and Domestic Relations District Court Service Unit** can assist you in better understanding the procedures of the court.

TOLL-FREE NUMBERS

Crime Victim Assistance INFO-LINE

The Crime Victim Assistance INFO-LINE number is 1-888-887-3418 (TTY/TDD). Monday through Thursday, 8:30 a.m. – 4:30 p.m., the INFO-LINE staff can:

- Provide information and referral services to victims
- Inform victims of their rights under Virginia's *Crime Victim and Witness Rights Act*
- Provide crisis intervention, as needed

Family Violence and Sexual Assault Hotline

The Family Violence and Sexual Assault Hotline number is 1-800-838-8238 (V/TTY). The hotline staff can put you in touch with a **domestic violence program**, local **victim/witness program**, and/or **court service unit**. Hotline staff are there to answer your questions 24 hours a day.

PROTECTIVE ORDERS

You may request a protective order if you have reason to fear an assault by a **family or household member** or have been the victim of an assault where you experienced serious bodily injury by a non-family or household member (see *page 18 for the legal definition of family abuse*). A **family or household member** includes: spouse (regardless of whether you live together); ex-spouse (regardless of whether you live together); parents, children, stepparents and stepchildren, brothers and sisters, half brothers and half sisters, grandparents and grandchildren (regardless of whether you live together); in-laws (who reside in the same home with the abuser); cohabitants (those who live together) and those who cohabited in the past year, and their children; and persons who have a child in common (even if you have never lived together).

A protective order involves civil law, not criminal law. This means that the **abuser** will not receive any jail time as a result of the order. The order is not effective until the abuser receives a copy. However, if the order is violated, the **abuser** can be charged with violation of a protective order, which will result in jail time. (*Virginia Code §16.1-253.2*) If an **abuser** is convicted of violating the protective order, a new protective order is automatically issued that expires two years from the date of the conviction of this offense, but may be extended.

An **emergency protective order** (*Virginia Code §16.1-253.4*) may prohibit the abuser from contacting you, entering your home or apartment, or abusing you in the future. It can be obtained through a **law enforcement officer** responding to the scene who can request the order from a **judge** or **magistrate** by telephone or in person. You may also go to a

magistrate and request an **emergency protective order** on your own. This order lasts until 11:59 p.m. on the third day after it was issued, unless that day is a day that the **Juvenile and Domestic Relations District Court** is not in session. In that case, the order is extended until 11:59 p.m. on the next business day the **Juvenile and Domestic Relations District Court** is in session.

A **preliminary protective order** (*Virginia Code §16.1-253.1*) is similar to an **emergency protective order**, but it generally lasts up to fifteen days and must be obtained through the **Juvenile and Domestic Relations District Court Service Unit**. You are not required to obtain an attorney for this process; however, if you wish to have an attorney assist you, you may retain one on your own or contact your local **legal aid society**.

A **permanent protective order** (*Virginia Code §16.1-279.1*) may prohibit the **abuser** from contacting you, entering your home or apartment, or attempting to cause you harm. This order may also require the **abuser** to provide for your housing and/or medical treatment or require the **abuser** to attend counseling. You may also request to have temporary use of a motor vehicle that is jointly owned by you and the **abuser**. The order lasts up to two years, but may be extended. It must be obtained through the **Juvenile and Domestic Relations District Court Service Unit**. You are not required to obtain an attorney for this process; however, if you wish to have an attorney assist you, you may retain one on your own or contact your local **legal aid society**.

You may request a protective order, even if the **abuser** is not arrested or charged. If you have questions about protective orders and how to request one, you may wish to contact one of the following for information and/or assistance: **Juvenile and Domestic Relations District Court Service Unit**, the local **domestic violence program**, the **victim/witness program**, the police department or sheriff's office, or the Family Violence and Sexual Assault Hotline at: 1-800-838-8238.

Keep a copy of the protective order with you at all times. Keep copies of any of the **abuser's** criminal convictions. Show these to the **law enforcement officer**, **magistrate**, **prosecutor**, or **judge**, if the order is violated.

Remember that a protective order does not guarantee your safety. You must notify the police or sheriff's department and/or the court if it is violated, so the **abuser** can be charged or arrested.

For additional details and information regarding Protective Orders, please see the DCJS brochure *Domestic Violence Protective Orders: A Guide for Victims of Domestic Violence in Virginia*.

CRIMINAL WARRANTS

In Virginia, a **law enforcement officer** has the authority to arrest, without a **warrant**, if there is **probable cause** that **assault and battery against a family or household member** has occurred. Each law enforcement agency is required to have a policy describing its local procedures for handling arrests.

You may want to file for an arrest **warrant** by contacting a **magistrate** yourself. A **magistrate** can issue a **warrant** based on your sworn statement or on other evidence such as **witnesses**, photographs or physical injuries.

GOING TO COURT

Appearing in court may be a frightening or intimidating experience. Facing the person who abused you, the **defendant**, may be difficult. It is important to speak to an **advocate** to prepare for this experience. Advocates are available through your local **domestic violence program** and **local victim/witness program**.

The office of the **commonwealth's attorney** prosecutes crimes on behalf of the community. When an individual is violent with a **family or household member**, the **commonwealth's attorney** or **assistant commonwealth's attorney** may **prosecute** the case. The **commonwealth's attorney** or **assistant commonwealth's attorney** is sometimes referred to as the **prosecutor**. The person who has been abused is frequently the most important **witness**. You do not need an attorney of your own for this criminal prosecution. You may wish to contact an attorney if you are taking other civil actions, such as petitioning for custody, visitation, support or divorce.

The **abuser** is considered the **defendant** in the case. As the **defendant**, the **abuser** has the right to an attorney (sometimes referred to as a **defense attorney**). The **defendant** can privately obtain an attorney or have one appointed by the court during a "**counsel determination**" hearing. You do not have to be present at this hearing.

Do not be afraid to ask for support. If you do not know your local program number, you can call the Family Violence and Sexual Assault Hotline at 1-800-838-8238 or the INFO-LINE at 1-888-887-3418.

PREPARING FOR COURT WHEN A PROSECUTOR WILL NOT BE PRESENT

Some communities may not have a **prosecutor** available to present the case to the court. If this is the case, you will be summoned to court as a **witness** and the **judge** will ask you and the **defendant** questions.

You may **subpoena** other **witnesses** through the **clerk of court**, and you may bring evidence with you to court.

As soon as the trial date is scheduled, give the **clerk of court** the names and addresses of any **witnesses** that you want **subpoenaed**.

You may wish to ask the **prosecutor**, **victim/witness program** staff or **advocate** about how to select **witnesses** to **subpoena** and what evidence to bring to court, etc.

The **defendant**, or the **defendant's** lawyer, will have the opportunity to ask you questions.

The **judge** will ask you questions to provide you with the opportunity to tell what happened. Be sure to tell the **judge** if there have been threats or additional abuse since the violent incident for which the **defendant** is charged.

A **victim/witness program** staff member, an **advocate** from the local **domestic violence program**, a friend, or a relative may be able to accompany you to court.

The **judge** can consider sentencing alternatives to jail, such as counseling and/or no contact with you. If you are interested in an alternative, tell the **judge** what you have in mind. Remember that the **judge** makes the final decision.

Sometimes, a suspended jail sentence is used to assure that the **defendant** obeys the court orders.

PREPARING FOR COURT WHEN A PROSECUTOR IS PRESENT

If you have been a **victim** of **domestic violence** and you are going to be a **witness** in court, contact the **commonwealth's attorney's** office prior to your court date. Ask to speak to the person handling your case. Ask the following questions:

- What do I need to do to prepare for court?
- Is there anything I should bring with me to court?
- What should I do if I am threatened or abused again before I go to court?
- What should I do if the **defendant** pressures me to have the charges dropped?
- What if I am afraid to testify in court?
- What will happen if the **judge** finds the **defendant** guilty?
- What should I do if my **abuser** violates any orders of the court?
- Is there anything else I should know?

UNDERSTANDING THE LEGAL PROCESS

Questions the Prosecutor may ask you:

- Are you (and your children) safe?
- Were the police called at the time of the abuse?
- Were there any other **witnesses** to the abuse?
- Is there any evidence of the abuse, such as pictures or hospital/medical records? Do you have any hospital or medical bills?
- Have there been previous episodes of violence? Has the defendant been criminally charged before? If so, has the **defendant** been found guilty of these charges?
- Has a protective order been issued?
- What alternatives would you like the court to consider in sentencing?
- How can we contact you prior to court?
- Has the **defendant** threatened or hurt you or your children since the incident?
- What is your relationship with the **defendant** like now?
- Do you have any other questions?

WHEN YOU GO TO COURT

Have a plan for your safety when going to and from court. You may have to wait in the same room or hallway with the **abuser's** family members and friends. Ask the **bailiff**, victim **advocate** or **prosecutor** if there is a separate area where you can wait.

Dress in neat, simple clothing. Your appearance will make an immediate impression on the court (**judge**).

When the clerk calls the **defendant's** name, you should also approach the **judge**.

When you testify, take your time responding to questions. Try to picture exactly what happened, and tell the truth about what you remember. If you do not understand a question, ask that it be worded differently. It is okay to say that you do not know the answer to a question.

Remember that the **judge** will be most interested in the events charged in the **warrant** and that you may not be allowed to testify about past assaults.

Speak clearly, and address your answers to the **judge** or jury. If your injuries make it difficult for you to speak or to hear, let the **judge** know this.

Be polite, firm and clear in your answers, even if the questions seem hostile.

Do not interrupt when the **judge**, attorney or **defendant** is speaking. Stop talking if an objection is made by one of the attorneys, or if the **judge** interrupts. The **judge** will tell you if you can finish your answer. If you have forgotten the question you were answering, ask to have it repeated.

COMPENSATION FOR VICTIMS OF CRIME

If you are the **victim** of a crime in Virginia and if you were physically injured during the crime, or injured trying to stop a crime or an attempted crime, or injured trying to catch a person who committed a crime in your presence, or you are the surviving spouse, parent, grandparent, sibling, child, or legal dependent of a **victim** who was killed because of a crime or attempting to stop a crime, then you may be compensated for certain unreimbursed losses such as:

- Loss of earnings
- Unreimbursed medical expenses
- Mental health counseling
- Funeral expenses, up to \$5,000
- Crime scene clean-up expenses
- Reasonable and necessary moving expenses, up to \$1,000
- Expenses attributable to pregnancy resulting from forcible rape
- Counseling expenses for children who witness violence against their primary caregiver
- Loss of support if the offender is removed from the household due to a violent crime
- Other reasonable and necessary expenses resulting from your injury or from the death of a crime **victim**

You must:

- Report the crime to a law enforcement agency within 120 hours (or show good cause for not doing so).
- Cooperate with law enforcement agencies and the courts.
- File a compensation claim within one year from the date of the crime (or show good cause for not doing so).
- File an application for payment of medical expenses through your insurance and other available sources, such as Medicare, Medicaid, State and Local Hospitalization, or other providers.

UNDERSTANDING THE LEGAL PROCESS

- The **prosecutor** and/or **victim/witness program** staff can advise you on how to apply for victims' compensation and, if necessary, assist you with the application. With your signed authorization, the **victim/witness program** staff may contact staff of the Criminal Injuries Compensation Fund (the Fund) to follow up on your claim.

The Virginia Workers' Compensation Commission administers the Fund. **For more information or for an application, call the Criminal Injuries Compensation Fund at**

1-800-552-4007 (toll-free statewide) or e-mail the Fund at cicfmail@vwc.state.va.us

Or write:

Criminal Injuries Compensation Fund
P. O. Box 26927
Richmond, VA 23261

Additional information on the Fund can also be found at www.cicf.state.va.us

DEFINITIONS, AS USED IN THIS GUIDE

- **abuser**—A person who harms or threatens to harm another by physical, emotional, sexual or verbal abuse.
- **advocate**—A person who assists crime victims by providing emotional support, counseling, referrals and/or an explanation of the services available to them.
- **assault and battery against a family or household member**—An act of physical violence committed by one family or household member against another.
- **assistant commonwealth's attorney**—A lawyer who works for the commonwealth's attorney to assist him/her in prosecuting criminal and traffic cases; also called a prosecutor.
- **bailiff**—A sheriff's deputy assigned to the courtroom to keep order and provide security and safety.
- **clerk of court**—A court official who keeps records and office files, and who swears in jurors and witnesses.
- **commonwealth's attorney**—A lawyer elected by the people and employed by the state to prosecute criminal and traffic cases; also called a prosecutor.
- **counsel determination**—A court hearing held before a judge to inform the defendant about the charges against him/her, and his/her rights to have a lawyer, and a trial. If necessary, a lawyer is appointed to represent the defendant. This proceeding is sometimes called an arraignment.
- **defendant**—A person accused of committing a crime in a criminal case.
- **defense attorney**—The lawyer for the defendant.
- **domestic violence**—A pattern of physically, sexually, and/or emotionally abusive behaviors used by one individual to assert power or maintain control over another in the context of an intimate or family relationship.
- **domestic violence program**—A program which offers services (usually 24 hours a day) for victims of domestic violence and their children who have been physically or emotionally abused, or who have been threatened with abuse by their spouses or partners. Services include crisis intervention, counseling, shelter, escort to court, food, clothing and transportation.
- **domestic violence shelter**—A "safe house" where victims of domestic violence and their children can stay for a limited period of time. A shelter usually is operated in conjunction with a domestic violence program, which offers other support services. (see also definition of domestic violence program)
- **emergency protective order**—(*Virginia Code* §16.1-253.4) May prohibit the abuser from contacting you, entering your home, or abusing you in the future. This order lasts until 11:59 p.m., on the third day after it was issued, unless that day is a day that the Juvenile and Domestic Relations Court is not in session. In that case the order is extended until 11:59 p.m. on the next business day the Juvenile and Domestic Relations Court is in session.
- **family abuse**—Any act involving violence, force or threat, including forceful detention, which results in physical injury or places one in reasonable fear of serious bodily injury which is committed by a person against a family or household member.

UNDERSTANDING THE LEGAL PROCESS

- **family or household member**—Includes: spouse (regardless of whether you live together); ex-spouse (regardless of whether you live together); parents, children, stepparents and stepchildren, brothers and sisters, half brothers and half sisters, grandparents, grandchildren (regardless of whether you live together) and in-laws (if you live in the same house); cohabitants (those who live together) and those who cohabited in the past year and their children; and persons who have a child in common (even if you have never lived together).
- **judge**—A court official who listens to the case, decides if the defendant is guilty or not, and determines the appropriate punishment.
- **juvenile and domestic relations district court**—The court that handles cases involving persons accused of committing offenses against family or household members. This court does not conduct jury trials. A judge hears all cases.
- **juvenile and domestic relations district court service unit**—The court service unit serves the court by carrying out the judge's orders and facilitating the supervision and rehabilitation or treatment of youth, families and adults who come before the court.
- **law enforcement officer**—A police officer or sheriff's deputy.
- **legal aid society**—A nonprofit law firm established to provide free civil legal services to eligible low-income individuals.
- **magistrate**—A court official having the authority to bring criminal charges for acts of violence based on the sworn testimony of an individual or a law enforcement officer.
- **permanent protective order**—(*Virginia Code* §16.1-279.1) May prohibit the abuser from contacting you, entering your home or apartment, or abusing you in the future. This order may also require the abuser to provide for your housing and /or medical treatment or require the abuser to attend counseling. You may also ask to have temporary use of a motor vehicle jointly owned by you and the abuser. The order typically lasts up to two years but may be extended. It must be obtained through the Juvenile and Domestic Relations District Court Service Unit.
- **preliminary protective order**—(*Virginia Code* §16.1-253.1) Is similar to an emergency protective order, generally lasts up to fifteen days, and must be obtained through the Juvenile and Domestic Relations District Court Service Unit.
- **probable cause**—Reasonable grounds to believe that an accused person is guilty as charged.
- **prosecute**—To bring criminal action against a defendant.
- **prosecutor**—Another name for the commonwealth's attorney or assistant commonwealth's attorney.
- **subpoena**—A written legal order telling a person to be in a court at a specific time and place to give testimony, sometimes called a summons.
- **victim**—A person who was mistreated or hurt by an abuser.
- **victim/witness program**—Program generally located within the commonwealth's attorney's office or local law enforcement agency. Program staff and volunteers assist victims and witnesses in understanding the criminal justice system.
- **warrant**—A written legal order authorizing a law enforcement officer to make an arrest.
- **witness**—A person who testifies under oath as to what he/she knows, has heard or observed about a crime.

ABOUT DCJS

The Department of Criminal Justice Services (DCJS) is a state agency whose mission is to improve and promote public safety in the Commonwealth. DCJS is developing, coordinating and funding victim/witness programs, sexual assault programs, domestic violence programs and other programs which address violence against women and children throughout the state.

This brochure was originally printed in October 1994. It was revised and updated in November 1997, December 2000, June 2004 and in January 2010.

To obtain additional copies, please contact:

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Copies may also be downloaded from our website at www.dcjs.virginia.gov

ACKNOWLEDGMENTS

This brochure was originally developed by the Victims Services Section of the Department of Criminal Justice Services in conjunction with the Commonwealth's Attorneys' Services Council, Virginians Against Domestic Violence (VADV), Mary and William Law Society, and the Williamsburg Victim Assistance Program. A special thank you is extended to these organizations and all others who assisted with this brochure.

IMPORTANT PHONE NUMBERS

The Number for your
Local Victim/Witness Program is:

The Number for your
Local Court Service Unit is:

The Number for your
Local Domestic Violence Program is:

The Number for your
Commonwealth's Attorney's Office is:
